



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95616; File No. SR-FICC-2021-009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving of Proposed Rule Change to Enhance Capital Requirements and Make Other Changes

August 26, 2022.

I. Introduction

On December 13, 2021, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2021-009 (the “Proposed Rule Change”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the Federal Register on December 29, 2021.³ On January 26, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁵ On March 23, 2022, the Commission instituted proceedings to determine whether to approve or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93857 (December 22, 2021), 86 Fed. Reg. 74130 (December 29, 2021) (File No. SR-FICC-2021-009) (“Notice of Filing”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ Securities Exchange Act Release No. 94066 (January 26, 2022), 87 Fed. Reg. 5523 (February 1, 2022) (SR-FICC-2021-009).

disapprove the Proposed Rule Change.⁶ On June 23, 2022, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ The Commission has received comments regarding the substance of the Proposed Rule Change.⁸ For the reasons discussed below, the Commission is approving the Proposed Rule Change.⁹

II. Description of the Proposed Rule Change

FICC proposes to amend the Government Securities Division (“GSD”) Rulebook (the “GSD Rules”) and the Mortgage-Backed Securities Division (“MBSD”) Clearing Rules (the “MBSD Rules,” and together with the GSD Rules, the “Rules”) of FICC in order to (A) revise FICC’s capital requirements for GSD members and MBSD members (collectively, “members”),¹⁰ (B) streamline FICC’s Watch List and enhanced surveillance list, and (C) make certain other clarifying, technical, and supplementary changes to

⁶ Securities Exchange Act Release No. 94497 (March 23, 2022), 87 Fed. Reg. 18409 (March 30, 2022) (SR-FICC-2021-009).

⁷ Securities Exchange Act Release No. 95144 (June 23, 2022), 87 Fed. Reg. 38807 (June 29, 2022) (SR-FICC-2021-009).

⁸ The Commission received one comment letter that does not bear on the Proposed Rule Change. The comment is available at <https://www.sec.gov/comments/sr-ficc-2021-009/srficc2021009.htm>. Since the proposed changes contained in this Proposed Rule Change are similar to changes proposed simultaneously by FICC’s affiliates, National Securities Clearing Corporation and The Depository Trust Company, the Commission has considered all public comments received on the proposals regardless of whether the comments are submitted to the Proposed Rule Change or to the proposals filed by FICC’s affiliates.

⁹ Capitalized terms not defined herein are defined in FICC’s Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>.

¹⁰ FICC states that these capital requirements have not been updated for nearly 20 years. See Notice of Filing, supra note 3, at 74130. Although FICC has not updated capital requirements for many of its members in nearly 20 years, during that time FICC has adopted new membership categories with corresponding capital requirements that FICC believes are still appropriate. As such, FICC is not proposing changes to capital requirements for all membership categories. See id.

implement items (A) and (B).

A. Changes to FICC's Capital Requirements for Members

i. GSD Netting Members and MBSD Clearing Members

U.S. Broker-Dealer or Future Commission Merchant Members: For certain GSD Netting Members¹¹ and MBSD Clearing Members,¹² FICC proposes not to change the applicable capital requirements, but to (i) provide expressly for equivalence among measures of Excess Net Capital, Excess Liquid Capital,¹³ and Excess Adjusted Net Capital,¹⁴ depending on what such members are required to report on their regulatory filings¹⁵ and (ii) make some clarifying and conforming language changes to improve the accessibility and transparency of the capital requirements, without substantive effect. FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

¹¹ The GSD Netting Members include Dealer Netting Members, Futures Commission Merchant Netting Members, and Inter-Dealer Broker Netting Members.

¹² The MBSD Clearing Members include Dealer Clearing Members and Inter-Dealer Broker Clearing Members.

¹³ FICC proposes to define, in both the GSD and MBSD Rules, Excess Liquid Capital as the difference between the Liquid Capital of a Government Securities Broker or Government Securities Dealer and the minimum Liquid Capital that such Government Securities Broker or Government Securities Dealer must have to comply with the requirements of 17 CFR Section 402.2(a), (b) and (c), or any successor rule or regulation thereto.

¹⁴ FICC proposes to define, in both the GSD and MBSD Rules, Excess Adjusted Net Capital as the difference between the adjusted net capital of a Futures Commission Merchant and the minimum adjusted net capital that such Futures Commission Merchant must have to comply with the requirements of 17 CFR Section 1.17(a)(1) or (a)(2), or any successor rule or regulation thereto.

¹⁵ In addition to these requirements, FICC is proposing that MBSD Inter-Dealer Clearing Members have a Net Worth of \$25 million.

U.S. Bank and Trust Company Members: For GSD Bank Netting Members and MBSD Bank Clearing Members, FICC proposes to (1) change the measure of capital requirements for banks and trust companies from equity capital to common equity tier 1 capital (“CET1 Capital”),¹⁶ (2) raise the minimum capital requirements for banks and trust companies from \$100 million to \$500 million, and (3) require U.S. banks and trust companies to be well capitalized (“Well Capitalized”).¹⁷

The proposal would align FICC’s capital requirements with banking regulators’ changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.¹⁸ Consistent with these changes by banking regulators, FICC states that it believes that the appropriate capital measure for members that are banks and trust companies should be CET1 Capital and that FICC’s capital requirements for members should be enhanced to be consistent with these increased regulatory capital requirements.¹⁹ FICC further states that it believes the proposed capital requirements for banks better measures the capital available to bank members to absorb losses arising out of their clearance and settlement activities at FICC or otherwise, and would help FICC more effectively manage and mitigate the credit risks posed by its members.²⁰

¹⁶ Under the proposal, CET1 Capital would be defined as an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

¹⁷ FICC proposes to incorporate the definition of “Well Capitalized” as that term is defined by the Federal Deposit Insurance Corporation in its capital adequacy rules and regulations. See 12 CFR 324.403(b)(1).See 12 CFR 324.403(b)(1).

¹⁸ See Notice of Filing, supra note 3, at 74134.

¹⁹ See id.

²⁰ See id. at 74141.

Additionally, FICC states that requiring U.S. banks and trust companies to be Well Capitalized ensures that bank members are well capitalized while also allowing CET1 Capital to be relative to either the risk-weighted assets or average total assets of the bank or trust company.²¹ FICC further states that expressly tying the definition of Well Capitalized to the FDIC's definition of "well capitalized" will ensure that the proposed requirement keeps pace with future changes to regulatory capital requirements.²²

Foreign Broker-Dealer and Bank Members

Currently, a member who is a foreign broker-dealer or bank is subject to a multiplier that requires such member to maintain capital of either 1.5, 5, or 7 times its otherwise-applicable capital requirements.²³

Foreign Broker-Dealer Members: FICC proposes to require a Foreign Netting Member or Foreign Person Clearing Member²⁴ who is a broker or dealer to maintain a minimum of \$25 million in total equity capital. FICC states the multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP.²⁵ However, given that accounting standards have converged over the years, FICC no longer believes the multiplier is necessary and its retirement would be a welcomed simplification for both FICC and its members.²⁶

²¹ See id. at 74134.

²² See id.

²³ The applicable multiplier is based on which generally accepted accounting standards ("GAAP") the non-U.S. member uses to prepare its financial statements, when not prepared in accordance with U.S. GAAP. See Section 4(b) of Rule 2A of the GSD Rules and Section 2(e) of Rule 2A of the MBSD Rules, supra note 9.

²⁴ Under the proposal, this requirement would not apply to a Dealer Clearing Member or Inter-Dealer Broker Clearing Member.

²⁵ See id. at 74191.

²⁶ See id. at 74191.

Non-U.S. Bank Members: Like U.S. bank members, FICC proposes that non-U.S. bank members maintain at least \$500 million in CET1 Capital. FICC proposes additional requirements for non-U.S. bank members²⁷ as follows: (1) comply with the greater of (i) the member's home country minimum capital and ratio requirements, including any applicable buffers, or (ii) the minimum capital and ratio standards promulgated by the Basel Committee on Banking Supervision,²⁸ (2) provide an attestation for itself, its parent bank, and its parent bank holding company detailing the minimum capital requirements, including any applicable buffers, and capital ratios required by their home country regulator,²⁹ and (3) notify FICC of (i) any breach of its minimum capital, including buffers, and ratio requirements within two business days, or (ii) any changes to its requirements within 15 calendar days.

Other Foreign Members: FICC proposes that it may, based on information provided by or concerning an applicant that is a Foreign Netting Member or a Foreign Person who is a Clearing Member, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles another existing category of

²⁷ For GSD, this includes a Foreign Netting Member that is bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and not applying to become a Bank Netting Member through a U.S. branch or agency. For MBSD, Foreign Person that is a Clearing Member who is a bank or trust company established or chartered under the laws of a non-U.S. jurisdiction and not applying to become a Bank Clearing Member through a U.S. branch or agency.

²⁸ See Basel Committee on Banking Supervision, The Basel Framework, available at https://www.bis.org/basel_framework/index.htm?export=pdf. NSCC states that the proposal will align NSCC's capital requirements with banking regulators' changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world. See Notice of Filing, supra note 3, at 74190. See also supra note 30. NSCC proposes tying its minimum requirement to the requirements promulgated by the Basel Committee on Banking Supervision to ensure that its non-U.S. bank members meet minimum international standards where their home country requirements may be more lenient.

²⁹ FICC also proposes to require non-U.S. bank members to periodically provide new attestations on at least an annual basis and upon request by FICC.

Netting Member or Clearing Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.³⁰

Insurance Company Netting Members: FICC proposes to leave the capital requirements applicable to Insurance Company Netting Members unchanged, however FICC proposes to (i) specify the calculation of the existing risk-based capital ratio and (ii) correct typographical errors and make some clarifying and conforming language changes and add a paragraph heading to improve the accessibility and transparency of the capital requirements, without substantive effect.³¹ FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

Other Types of Netting Members and Clearing Members

Currently, other types of entities applying to be a Netting Member or Clearing Member, are required to satisfy such minimum standards of financial responsibility as determined by FICC. FICC proposes to adopt more specific standards for these different types of members.

³⁰ The member must also continue to maintain compliance with its home country's minimum financial requirements. See Section 3(a)(v) of Rule 2A of the GSD Rules and Section 1(j) of Rule 2A of the MBSD Rules, supra note 9.

³¹ FICC proposes to make some clarifying and conforming language changes to improve the accessibility and transparency of the capital requirements, without substantive effect, including, for GSD, Registered Investment Company Netting Members, and, for MBSD, Unregistered Investment Pool Clearing Members, Government Securities Issuer Clearing Members, Insured Credit Union Clearing Members, and Registered Investment Company Clearing Members.

Government Securities Issuer Netting Members: Currently, FICC does not have a capital requirement for this particular category of Netting Member. FICC proposes to require equity capital of at least \$100 million.

Other Netting Members and Clearing Members: Similar to other foreign member applicants discussed above, for other Netting Members or Clearing Members with no specific financial responsibilities requirements, FICC proposes that such Netting Members or Clearing Members be in compliance with their regulator's minimum financial requirements. FICC also proposes that it may, based on information provided by or concerning an applicant applying to become a Netting Member or Clearing Member, also assign minimum financial requirements for the applicant based on (i) how closely the applicant resembles an existing category of Netting Member or Clearing Member and (ii) the applicant's risk profile, which assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant.

ii. GSD Funds-Only Settling Bank Members and MBSD Cash Settling Bank Members

FICC proposes to require that a Funds-Only Settling Bank or a Cash Settling Bank Member that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio³² equal to or greater than the Tier 1 RBC Ratio that would be required for such Funds-Only Settling Bank to be Well Capitalized. FICC does not currently have a capital requirement for Funds-Only Settling Banks or Cash Settling Bank Members.

iii. GSD Sponsoring Members

³² For both GSD and MBSD, FICC proposes to define the Tier 1 RBC Ratio is the ratio of an entity's tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity's regulatory and/or statutory requirements.

FICC proposes to leave the required equity capital for a Bank Netting Member applying to become a Category 1 Sponsoring Member unchanged, however FICC proposes to (i) replace the previous references to such Bank Netting Member or its bank holding company being “well-capitalized” with the new defined term Well Capitalized and (ii) make some clarifying and conforming language changes to improve the accessibility and transparency of the capital requirements, without substantive effect.

FICC also proposes to clarify that an applicant must satisfy its applicable capital requirements when it applies for membership and at all times thereafter, and therefore proposes to delete language requiring that a member satisfy its capital requirements as of the end of the calendar month prior to the effective date of its membership.

iv. GSD CCIT Members

FICC proposes to leave the capital requirements for a CCIT Member unchanged but delete the required multiplier for a CCIT Member that does not prepare its financial statements in accordance with U.S. GAAP.³³ FICC also proposes to fix a typographical error and clarify existing language that the eligibility, qualifications and standards set forth in respect of an applicant shall continue to be met upon an applicant’s admission as a CCIT Member and at all times while a CCIT Member.

v. Implementation Timeframe

FICC proposes to implement the proposed changes to its membership capital requirements one year after the Commission’s approval of the Proposed Rule Change.³⁴ During the one-year period, FICC would periodically provide members with an estimate

³³ See supra text accompanying note 23.

³⁴ The changes to FICC’s Watch List and enhanced surveillance list discussed in Section II.B below will not be subject to the one year delayed implementation.

of their capital requirements based on the proposal.³⁵

B. Changes to FICC’s Watch List and Enhanced Surveillance List

FICC currently uses two credit risk monitoring systems: a Watch List and a separate list of members subject to enhanced surveillance (“enhanced surveillance list”). The current Watch List includes members that have either (1) receive a heightened credit risk rating based on FICC’s Credit Risk Rating Matrix (“CRRM”),³⁶ or (2) been deemed to pose a heightened credit risk to FICC or other members.³⁷ FICC may require a member placed on the Watch List to post additional collateral above the member’s margin calculated pursuant to FICC’s margin methodology.³⁸ Members on the Watch List are also subject to more thorough monitoring by FICC of its financial condition and operational capability.³⁹

FICC also maintains a separate enhanced surveillance list, which includes members who are subject to a more thorough monitoring of its financial condition and operational capability based on FICC’s determination that the member poses heightened credit risks, which may include members already on or soon to be on the Watch List.⁴⁰

³⁵ See Notice of Filing, supra note 3, at 74141.

³⁶ FICC members generally are subject to the CRRM, in which each member is rated on a scale of one to seven with seven reflecting the highest credit risk posed to FICC. Members who receive a CRRM rating of five to seven are currently, automatically placed on the Watch List. See Rule 1 and Section 12 of Rule 3 of the GSD Rules and Rule 1 and Section 11 of Rule 3 of the MBSD Rules, supra note 9.

³⁷ See id. In making its determination, NSCC may consider any information NSCC obtains through continuously monitoring its members for compliance with its membership requirements.

³⁸ See Section 12(e) of Rule 3 of the GSD Rules and Section 11(e) of Rule 3 of the MBSD Rules, supra note 9.

³⁹ See Section 12(f) of Rule 3 of the GSD Rules and Section 11(f) of Rule 3 of the MBSD Rules, supra note 9.

⁴⁰ See id.

Members on the enhanced surveillance list are reported to FICC's management committees, are regularly reviewed by FICC senior management, and may be required to make more frequent financial disclosures to FICC.⁴¹

FICC believes that maintaining two separate lists has confused various FICC stakeholders,⁴² so FICC proposes to remove references to an enhanced surveillance list from its Rules.⁴³ FICC also proposes to remove members with a CRRM rating of five from being automatically included on the Watch List. FICC states that members with a CRRM rating of five represent the largest single CRRM rating category, but FICC does not believe all such members present heightened credit concerns.⁴⁴ FICC would still retain the authority to place a member with a CRRM rating of five on the Watch List or otherwise if FICC deems the member poses a heightened risk to FICC. FICC believes that these procedures would allow it to appropriately monitor the credit risks presented to it by its members and that the enhanced surveillance list is not necessary because members on the enhanced surveillance list are subject to the same potential consequences as members placed on the Watch List.⁴⁵

C. Other Changes

FICC proposes to (1) revise or add headings and sub-headings as appropriate, (2) revise defined terms and add appropriate defined terms to facilitate the proposed changes,

⁴¹ See id.

⁴² See Notice of Filing, supra note 3, at 74140.

⁴³ For any members currently on the enhanced surveillance list that are not also on the Watch List, FICC will add these members to the Watch List. See id.

⁴⁴ See id. FICC states that the majority of members with a CRRM rating of 5 are either rated "investment grade" by external rating agencies or, in the absence of external ratings, FICC believes are equivalent to investment grade, as many of these members are primary dealers and large foreign banks. See id.

⁴⁵ See id. at 74133, 74140.

(3) rearrange and consolidate paragraphs to promote readability, (4) fix typographical and other errors, and (5) make specified other changes in order to improve clarity and the accessibility and transparency of the Rules.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁴⁶ provides that the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After careful review of the Proposed Rule Change and consideration of the comments on the proposal, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) of the Act,⁴⁷ and Rules 17Ad-22(e)(4) and (e)(18) thereunder,⁴⁸ for the reasons described below.

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.⁴⁹ Based on its review of the record, the Commission finds that the proposal is consistent

⁴⁶ 15 U.S.C. 78s(b)(2)(C).

⁴⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁸ 17 CFR 240.17Ad-22(e)(4) and (e)(18).

⁴⁹ 15 U.S.C. 78q-1(b)(3)(F).

with Section 17A(b)(3)(F) of the Act.

i. Prompt and Accurate Clearance and Settlement and Safeguarding of Securities and Funds

The Commission believes that the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds which are in the custody or control of FICC. The Commission believes that membership standards at covered clearing agencies should seek to limit the potential for member defaults and, as a result, losses to non-defaulting members in the event of a member default. As the Commission stated when adopting the Covered Clearing Agency Standards, using risk-based criteria helps to protect investors by limiting the participants of a covered clearing agency to those for which the covered clearing agency has assessed the likelihood of default.⁵⁰ More specifically, the Commission believes that membership standards related to minimum capital requirements serve as one tool in limiting this default risk by ensuring that members have sufficient capital to meet its obligations and to absorb losses.

Covered clearing agencies employ membership standards as the first line of defense in their risk management, ensuring that its members, among other things, hold sufficient financial resources to meet the obligations that they may incur as a member of the covered clearing agency. These requirements are separate from the collection of margin, which addresses the risk of the cleared transactions. Instead, capital requirements seek to ensure that FICC has sufficiently addressed the member's counterparty credit risk, that is, that the member has sufficient financial resources both to meet its margin requirements or potential loss allocation in the event of a member default; these requirements are not a substitute for margin.

⁵⁰ See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 Fed. Reg. 70786, 70839 (October 13, 2016) (S7-03-14) ("Covered Clearing Agency Standards").

The Commission also considered other factors as support for its determination that these proposed minimum capital requirements are reasonable. The Commission understands that FICC has not revised these requirements in over 20 years. During that time, the Commission recognizes that there have been significant changes to the financial markets during that timeframe, such as new risks arising from cyber threats and online trading technologies, and heightened operational risk due to a more sophisticated and complex business environment. In addition, the Commission understands that FICC considered several factors, including inflation and the capital requirements of other financial market infrastructures, and the Commission agrees that these factors support the reasonableness of the proposed minimum capital requirements.⁵¹ Further, the Commission believes that the consistency between the proposed requirements and those of other financial market infrastructures tends to indicate that such requirements should address the obligations attendant to participating in a financial market infrastructure like FICC, i.e., that they are tailored to ensure that a member can meet its requirements to FICC in the event of, for example, a loss allocation or an intraday margin call. Finally, based on its supervisory experience, the Commission understands that trading volume, in terms of both number of transactions and notional value, have increased significantly across the FICC membership during that time period.⁵² The Commission believes that

⁵¹ See Notice, supra note 3, at 74186, (citing, e.g., The Options Clearing Corporation, OCC Rules, Rule 301(a), available at <https://www.theocc.com/Company-Information/Documents-and-Archives/ByLaws-and-Rules> (requiring broker-dealers to have initial net capital of not less than \$2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, available at <https://www.cmegroup.com/rulebook/CME/I/9/9.pdf> (requiring clearing members to maintain capital of at least \$5 million, with banks required to maintain minimum tier 1 capital of at least \$5 billion).

⁵² See, e.g., DTCC Annual Reports, available at <https://www.dtcc.com/about/annual-report>, and CPMI-IOSCO Quantitative Disclosures for FICC, section 23.1 (setting forth daily average volumes by asset class and average notional value), available at <https://www.dtcc.com/legal/policy-and-compliance>.

this significant increase in trading volumes represents additional risk for FICC and supports the need for the proposed minimum capital requirements. Taken together, the Commission believes that these factors support its determination regarding the reasonableness of the proposed minimum capital requirements, as they would allow FICC to ensure that its members have capital sufficient to address the risks posed by their activities in addition to the margin for particular transactions.

For most members, the changes would increase the minimum capital requirements and ensure that members, such as U.S. and foreign bank members, would continue to hold sufficient financial resources consistent with those requirements and their applicable regulatory obligations, although they would not actually increase the amounts held as the members generally meet the new requirements already based on their current capital. Through these changes, FICC should be able to ensure members have sufficient capital to meet its obligations and to absorb losses, which could further limit the potential for a member default. In turn, limiting the potential for a member default should promote the prompt and accurate clearance and settlement of securities transactions. In addition, FICC's proposed minimum capital requirements would thereby further limit potential losses to non-defaulting members in the event of a member default, which helps assure the safeguarding of securities and funds which are in the custody or control of FICC.

Additionally, the Commission believes FICC's proposal to streamline its credit risk monitoring systems into one Watch List, as described above in Section II.B., would eliminate existing confusion and should enhance FICC's efficiency in monitoring its members' credit risk by focusing on only those members that present heightened credit risk. Similarly, the Commission believes FICC's proposal to make clarifying and transparency changes, as described above in Section II.C., would remove ambiguity and ensure FICC's Rules are clear and accurate, which would help ensure FICC's members understand its obligations to FICC and FICC's clearance and settlement activities.

Therefore, the Commission believes these changes should promote the prompt and accurate clearance and settlement of securities transactions.

ii. Protection of Investors and the Public Interest

The Commission believes that FICC's proposal to increase the capital requirements applicable to its members would protect investors and the public interest. As discussed above in Section III.A.1, the Commission believes the proposal is designed to strengthen FICC's risk management practices. Because a defaulting member could place stresses on FICC with respect to FICC's ability to meet its clearance and settlement obligations upon which the broader financial system relies, it is important that FICC has strong membership requirements to ensure that its members are able to meet their obligations. By reducing the risk of a member default and any subsequent allocation of losses, the proposal should help to protect investors and the public interest by helping to ensure that investors' securities transactions are cleared and settled promptly and accurately and to assure the safeguarding of securities and funds which are in FICC's custody or control.

For the reasons discussed in this Sections III.A., the Commission finds that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁵³

B. Consistency with Rule 17Ad-22(e)(4)

Rule 17Ad-22(e)(4)(i) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes,

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁵⁴

Increasing membership capital requirements, as described above in Section II.A., would help ensure that members maintain sufficient capital to meet their obligations to FICC, including potential future obligations required to fund its trading activity with FICC or to absorb losses allocated to it. By ensuring members' ability to meet their financial obligations to FICC, the proposal, in turn, will help ensure FICC continues to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

Additionally, the proposal to revise the Watch List, as described above in Section II.B, could help FICC better allocate its resources for monitoring its credit exposures to members, which, in turn, could help FICC more effectively manage and mitigate its credit exposures to its members. Therefore, the Commission finds the Proposed Rule Change is consistent with Rule 17Ad-22(e)(4)(i) under the Exchange Act.

C. Consistency with Rule 17Ad-22(e)(18)

Rule 17Ad-22(e)(18) under the Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.⁵⁵

⁵⁴ 17 CFR 240.17Ad-22(e)(4)(i).

⁵⁵ 17 CFR 240.17Ad-22(e)(18).

As described above in Section II.A., the proposal will increase FICC's minimum capital requirements for its members. For both U.S. and non-U.S. bank and trust company members, the proposal will revise how net capital is defined to incorporate a measurement used by banking regulators and impose additional financial requirements on non-U.S. bank and trust company members tied to home country regulatory requirements and international standards. For non-U.S. broker-dealers and government securities issuers, the proposal would eliminate conditional and discretionary minimum capital requirements in favor of establishing objective minimum capital requirements. The proposal will also establish a category for all other members, which will impose minimum financial requirements tied to that entity's regulatory requirements, which FICC may increase based on how closely it resembles another membership type and its risk-profile.

Additionally, as discussed above in Section III.A.i, the Commission understands that FICC considered several additional risks faced by its members, both qualitative and quantitative, in determining its proposed capital requirements.⁵⁶ Therefore, the Commission concludes the proposal is reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation. For the reasons described above, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(18) under the Act.⁵⁷

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular with the

⁵⁶ See Notice of Filing, supra note 3, at 74131.

⁵⁷ Id.

requirements of Section 17A of the Act⁵⁸ and the rules and regulations promulgated thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁵⁹ that proposed rule change SR-FICC-2021-009, be, and hereby is, APPROVED.⁶⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶¹

J. Matthew DeLesDernier,

Deputy Secretary.

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⁵⁸ 15 U.S.C. 78q-1.

⁵⁹ 15 U.S.C. 78s(b)(2).

⁶⁰ In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶¹ 17 CFR 200.30-3(a)(12).